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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventh session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 8 December 1992, at 3 p.m.

Chairman: Mr. ALSTON

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GE.92-18855 (E)

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS (agenda item 5) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Hungary (E/1990/7/Add.10, E/C.12/1992/WP.12) (continued)

1. The CHAIRMAN asked Committee members for general comments on the draft concluding observations on the report submitted by Hungary (E/C.12/1992/WP.12), which Mr. Neneman had prepared and had submitted at the 19th meeting.

2. Mr. SIMMA said the draft made plain that the Committee needed to clarify the procedure to be followed in drafting concluding observations in order to ensure that they were presented in a standard manner irrespective of the country concerned.

3. He felt there was some misunderstanding in the Committee as to the purpose of the reports submitted by States parties. Such reports were not intended to satisfy the curiosity of Committee members but to advance the realization of economic, social and cultural rights in the countries concerned, as indeed the Committee had noted in its General Observation No. 1 (1989) (E/1989/22, annex IV). In that respect, the Committee acted as a catalyst. He would submit some suggestions to the Committee at its next session on the preparation of general observations.

4. The CHAIRMAN said that a clear distinction had to be made between consideration of the draft general observations on the report submitted by Hungary and improvement of the Committee's methods of work.

5. The Committee's concluding observations would in future probably be very useful to all interested observers as sources of information on the situation relating to economic, social and cultural rights in the States parties to the Covenant. Up to the present, however, that had not been the spirit in which the Committee had drawn up its concluding observations. The Committee would therefore examine with interest any proposals Mr. Simma might submit to it in that respect.

6. He invited the Committee to move on to the consideration of document E/C.12/1992/WP.12.

7. Mr. SIMMA said that during the last stage of consideration of the report submitted by Hungary, in other words when the Hungarian delegation was replying to the points raised verbally by Committee members, the Hungarian representative had given a very detailed and satisfactory reply to a question he himself had asked on the manner in which international treaties had been incorporated into domestic law, and what had been done to ensure that domestic law was compatible with those treaties. The second paragraph of section 1 could not therefore be retained without a further comment that the question had subsequently been answered to the Committee's complete satisfaction. It would thus be preferable to delete the paragraph.

8. The CHAIRMAN suggested that the paragraph in question should be deleted and the status of human rights instruments added to the list of points which had received a very satisfactory response.

9. Mr. WIMER ZAMBRANO said that both in general and in its concluding observations the Committee should take great care to distinguish between its appreciation of the report a country had submitted and the human rights situation prevailing in that country. The two points were completely unrelated. A country might well submit an excellent report and at the same time have a calamitous human rights record. All permutations were possible.

10. Turning to document E/C.12/1992/WP.12, he considered that the second paragraph of section 2 should be deleted. Rather than listing the issues on which the Committee had been satisfied with the response (a list that could not be exhaustive, as evidenced by the use of the word "etc."), the Committee should say that it considered the report satisfactory except with regard to named points.

11. That example showed how important the format of the general observations was and the need for a standard layout.

12. Mr. SIMMA said he took Mr. Wimer Zambrano's point but was afraid that deletion of the second paragraph in section 2 would affect the balance of the document. As long as section 1 listed all the points which the Committee had considered had not received a sufficient response, the list appearing in the second paragraph of section 2 could not be deleted without amending section 1 in some wa

13. The CHAIRMAN said it seemed to him that Committee members would like the concluding observations under consideration to follow a new method of formulation, which had yet to be decided. It was very difficult to separate points of method from points of detail and the discussion was threatening to become bogged down. He therefore suggested, if it was acceptable to Committee members, and in particular to Mr. Neneman, the author of the working paper, that new draft concluding observations should be submitted to the Committee at its next meeting.

14. Mr. NENEMAN said he had no objection to the Chairman's suggestion. In preparing the draft concluding observations, he had endeavoured to follow established practice. In order to meet the wishes of Mr. Wimer Zambrano and Mr. Simma, he would be willing to delete the word "etc." at the end of the second paragraph of section 2, and to add to the list therein the incorporation of international treaties into domestic law.

15. Mr. MARCHAN ROMERO said that the third and fourth sentences of section 1 ("Additional information ... backed by statistical data") was completely at odds with the first paragraph of section 2 ("The supplementary information ... to the points raised verbally"), since each passage referred to a different stage of consideration of the Hungarian report. It was thus very important that the different stages should be clearly differentiated.

16. The CHAIRMAN said that if there was no objection, he would take it that the Committee agreed to defer adoption of its concluding observations on the

report submitted by Hungary until its next meeting, when a revised version of the draft concluding observations would be before it.

17. It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

18. The CHAIRMAN said that he had drawn up two draft declarations for inclusion in the annual report. Since they had not yet been translated into all the Committee languages, he asked Committee members whether they would prefer to defer consideration of the matter to the next meeting.

19. Mr. MARCHAN ROMERO suggested that the Chairman should give a first reading of the texts concerned, which the Committee could then consider in more detail at its next meeting.

Problems caused by last-minute deferrals of the presentation of reports

20. The CHAIRMAN read out the first document, which referred to the difficulties caused by last-minute notifications by States of their inability to present a report to the Committee as scheduled. The work of the present session of the Committee had been considerably hampered by four last-minute deferrals, for which no reason had been given. He emphasized the need to allow the Committee, in certain cases, to proceed with the examination of a report even when the State party had requested deferral. It would be too easy for a State that knew the Committee would be highly critical of recent incidents or situations on its territory to find an excuse to request deferral of consideration of the report.

21. Mr. SIMMA wholeheartedly endorsed the text read out by the Chairman, in particular its last sentence. There was one circumstance in which the Committee could decide to consider the report of a State party even when it had requested deferral, or before two to three years had elapsed since submission of the previous report, namely, when a non-governmental organization informed the Committee with supporting evidence that serious abuses of economic, social or cultural rights had taken place or were about to take place in a given country (for example, mass evictions in violation of the right to housing).

Response to very significantly overdue and non-submitted reports

22. The CHAIRMAN read out the text he had prepared on the subject.

ORGANIZATION OF WORK (agenda item 2) (continued)

23. The CHAIRMAN said that he would submit a draft revised text on the Committee's sources of information, observing that the substance of the text had already been considered in detail by Committee members.

24. As for the preparation of an optional protocol, he proposed to submit, on behalf of the Committee, a document that would combine the working paper from the previous session (E/C.12/1991/WP.2) and that from the present one

(E/C.12/1992/WP.9) and also reflect the various points raised during the Committee's discussion of the matter. He noted that Committee members would have little time to consider the text in detail and suggested that they might consider approving it as a whole. Alternatively, the two documents could be combined and submitted in his own name with a note that the Committee had considered the matter and approved the idea of an optional protocol, referring the reader to the summary record of the meeting at which the matter had been discussed.

25. Mr. KONATE asked that Committee members should be allowed a period of reflection before choosing between the alternatives suggested.

26. The CHAIRMAN said that he was not asking the Committee to make a substantive decision but simply wished to know whether he should prepare a document combining last year's and the present year's working papers and reflecting the Committee's discussion of the matter.

27. Mrs. JIMENEZ BUTRAGUEÑO said she considered the first course suggested by the Chairman to be in conformity with the Committee's methods of work and would enable it to advance more quickly.

28. Mr. MARCHAN ROMERO said he fully endorsed what Mrs. Jimenez Butragueño had said.

29. Mr. TEXIER said he too endorsed the first suggestion. However, he asked whether the document would be given a first informal examination and then considered again when the report was to be adopted, or whether it would not be considered until adoption of the report, which would perhaps allow the text to be available in the various languages.

30. The CHAIRMAN said that if the Committee agreed, he would submit a consolidated document on Thursday that would set out the various options and give the general observations made during the discussion of the matter. It would not, however, provide a set of definite conclusions, since Committee members had not always been unanimous on certain points such as the inter-State complaints system. The document would be available only in English as the translation services would not have time to translate it. Furthermore, it would be mentioned in the report that the Committee had considered the issue at length during the session and that the various points of view expressed would be found in the summary record of the meeting at which the matter had been discussed, that the Committee had endorsed the idea of an optional protocol, which it was submitting to the Economic and Social Council for consideration. He reminded Committee members that they had agreed that it was not for them to adopt such a proposal and that all that was required was to draw the Economic and Social Council's attention to the matter.

31. Mr. SIMMA asked whether that meant that the issue of the optional protocol would no longer be discussed by the Committee.

32. The CHAIRMAN said there was nothing to prevent the Committee from returning to the issue and keeping the Economic and Social Council informed of the progress of its work in the field. He hoped that the proposal would be welcomed with interest and that States would ask the Committee to continue its

work, or might even ask a working group to be set up under the Commission on Human Rights or the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

33. Mrs. JIMENEZ BUTRAGUEÑO said she would like the Committee, in its statement to the World Conference on Human Rights, to draw attention to the fact that it had approved the proposal for an optional protocol to the Covenant.

34. The CHAIRMAN recalled than in the draft statement it had adopted (E/C.12/1992/WP.13), the Committee had clearly indicated its view that all conditions were in place for adoption of a procedure for considering communications made under an optional protocol to the Covenant. Furthermore, a footnote stated that the proposal had been considered in detail in the paper annexed to the Committee's report on its seventh session.

35. Mr. TEXIER recalled that following consideration of the draft statement to be submitted to the World Conference on Human Rights, the Committee had decided to expand the paragraph relating to the proposal for an optional protocol to include an outline of the proposal. He felt, like Mr. Simma, that the Committee should continue to discuss the issue. In his view, an attempt should be made to persuade the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the merit of the proposal.

36. The CHAIRMAN read out the four sentences the Committee had agreed to add to the paragraph relating to the proposal for an optional protocol in the Draft Statement for Submission to the World Conference on Human Rights (E/C.12/1992/WP.13, revised version contained in E/C.12/1992/CRP.2/Add.1), which were worded as follows: "Such a procedure would be entirely optional and would permit communications to be submitted by individuals or groups alleging violations of the rights recognized in the Covenant. It might also include an optional procedure for the consideration of inter-State complaints. Various procedural safeguards designed to guard against abuse of the procedure would be adopted. They would be similar in nature to those applying under the first Optional Protocol to the Covenant on Civil and Political Rights".

37. Mr. SIMMA proposed that in the first sentence the words "would be entirely optional" should be replaced by "would not be obligatory". The word "optional" was a technical term that should only be used in very specific circumstances.

38. The CHAIRMAN said he saw no real difference between the two concepts but would accept Mr. Simma's proposal. He suggested that the working paper on the proposal for an optional protocol (E/C.12/1992/WP.9) should be annexed to the Statement for Submission to the World Conference.

39. Mrs. BONOAN-DANDAN endorsed that proposal in view of the importance the Committee attached to the proposed protocol.

40. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee decided to annex the working paper on the proposed optional protocol to the Statement for submission to the World Conference.

41. It was so decided.

42. The CHAIRMAN drew the Committee's attention to a point relating to organization of work that he would like to see on the agenda of the next session of the Committee. He noted that a large part of the resources of the Centre for Human Rights was spent in preparing for the Committee's report summaries of the discussions on the reports submitted by States parties. That was a long-standing procedure within the United Nations, but he joined Mr. Simma in wondering whether it was really necessary. The questions from experts and the replies from the representatives of States parties were summarized, revised, edited and finally summarized once more by the staff of the Centre for Human Rights. The outcome of those various operations was that the summaries of the consideration of reports submitted by States parties were a far from accurate reflection of the actual exchanges between experts and State representatives; any liveliness in the discussion was frequently dissipated in United Nations jargon.

43. Furthermore, the only document actually accessible to the public was the Committee's annual report; the summary records of the meetings were, on the other hand, extremely difficult to get hold of. To overcome that problem, the Committee might for instance take more pains over the concluding observations it adopted and perhaps include summaries of those observations in its report. Interested persons who wished further details would be able to consult the summary records. In that context, the Committee might ask for the summary records to be collected together and made more accessible to the public. It should not be forgotten that documents emanating from the Committee were expected to influence Governments and the general public. He recalled further that the Committee had a long-standing request for the Centre for Human Rights to prepare a document to present the Committee's work to the public.

44. To sum up, he considered that those issues should receive the Committee's attention and proposed to submit a working paper on the subject to the next session of the Committee.

45. Mr. TEXIER said he fully endorsed the Chairman's proposal.

46. Mrs. JIMENEZ BUTRAGUEÑO considered, moreover, that the Committee ought to improve its methods of work. For example, it should improve cooperation and communication among its experts and take advantage of the specialized knowledge each could offer.

The meeting rose at 5.05 p.m.